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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,254	11/19/2003	Jean-Michel Auclair	D-3144	7760

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EXAMINER

GEHMAN, BRYON P

ART UNIT PAPER NUMBER

3728

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

**Office Action Summary****Application No.**

10/717,254

**Applicant(s)**

AUCLAIR ET AL.

**Examiner**

Bryon P. Gehman

**Art Unit**

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/26/04</u> . | 6) <input type="checkbox"/> Other: _____  |

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1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the rows and columns as set forth in the claims, to the degree they are supported by the original disclosure, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 20-29 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicants' recitation relative to the columns and rows is indefinite, as the specification defines the rows as "vertically arranged" and the columns therefore horizontally arranged. However, applicants only show two columns as defined in any of the drawings. Therefore it is indefinite how the "column that is adjacent to an endmost column" is any other but the other column. There is also no support for an "uppermost row" or "lowermost row" or rows there between.

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In claim 24, the arrangement as claimed is not shown by the drawings nor understood clearly from applicants' disclosure.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 20-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 20, line 7, there is no antecedent to distinguish an "endmost column", as no end has been defined. Also in line 7, "said article group" is indefinite, as "group of articles" is the language previously said. Applicants' language is inconsistent or indefinite. See also claims 28 and 29, lines 2-3 and 3, respectively. The patentable significance of the articles being disposed in columns and a row is indefinite, as such contents are never positively defined as part of the claimed structure.

In claim 22, line 1, "said article" is inconsistent with claim 20, line 6. See also claims 23 and 24, line 1 of each. In line 1, "said column" is indefinite, as no column per se has ever been defined. It is indefinite whether applicants are including the articles as part of the invention, as such has never been set forth. See also claims 23 and 24. In line 2, there is no basis for "uppermost row".

In claims 25-27, line 1 of each, "said detachable portion" is inconsistent with claim 20, line 4.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

7. Claims 20-21 and 23-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Vizethann (3,237,837). Claims 20-22 and 24-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller (Figures 7-10)(2004/0089671). Claims 20-21 and 23-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Bates (2004/0232214). Each discloses a carton for enclosing a group of cylindrical articles comprising a plurality of walls (12-18, 24-30; 114-120; 16-24) hingedly connected to one another, and at least one detachable portion (56, 58; 174; 70).

As to claim 21, each discloses at least one partially detachable portion (60; 176 in Figure 10; 80).

As to claim 22, Miller discloses an uppermost row article being exposed.

As to claim 23, Vizethann and Bates disclose a lowermost row article being exposed.

As to claim 24, Vizethann discloses a vertical row between upper and lower rows, while Miller and Bates disclose a structure as demonstrated by applicants.

As to claim 25, the at least one detachable portion is defined by a frangible line (50, 52; 194, 194a; 50, 52).

As to claims 26 and 27, the at least one partially detachable portion is defined in part by a frangible line (62; 188; 64 or 66) and a fold line (20; 190; 54).

As to claims 28 and 29, the openings of each could so act if the articles were actually located in the carton.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vizethann (3,237,837). To reverse the disposition of the carton such that side 12 is lowermost would fall within the level of ordinary skill in the art.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are similar dispensing cartons.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman  
Primary Examiner  
Art Unit 3728

BPG